



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013- 0794; FRL- 9906-66-Region-4]

**Approval and Promulgation of Implementation Plans; Kentucky; Stage II Requirements
for the Hertz Corporation facility at Cincinnati/Northern Kentucky International Airport
in Boone County**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a source-specific State Implementation Plan (SIP) revision submitted to EPA by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on January 17, 2014, for the purpose of exempting a Hertz Corporation facility from the Clean Air Act (CAA or Act) Stage II vapor control requirements. The subject Hertz Corporation facility is currently being constructed at the Cincinnati/Northern Kentucky International Airport in Boone County, Kentucky. EPA's proposed approval of this revision to Kentucky's SIP is based on rationale contained in the December 12, 2006 EPA policy memorandum from Stephen D. Page, entitled "*Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated.*" This action is being proposed pursuant to the CAA.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2013-0794 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: EPA-R04-OAR-2013-0794, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 am to 4:30 pm, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA-R04-OAR-2013-0794." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information

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Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or

in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding this source specific SIP revision, contact Ms. Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sheckler's telephone number is (404) 562-9222; e-mail address: sheckler.kelly@epa.gov.

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I. Background

Under the CAA Amendments of 1990, EPA designated and classified three Kentucky Counties (Boone, Campbell and Kenton) and four Ohio Counties (Butler, Clermont, Hamilton and Warren) as a part of the Cincinnati/Northern Kentucky “moderate” nonattainment area for the 1-hour ozone national ambient air quality standards (NAAQS). *See* 56 FR 56694 (November 6, 1991). The designation was based on the Area’s 1-hour ozone design value of 0.157 parts per million for the three year period of 1988-1990.

Pursuant to the requirements of section 182(b)(3)¹ of the CAA, KDAQ developed the Kentucky Administrative Regulation (KAR) 401 KAR 59:174 “Stage II controls at gasoline dispensing facilities,” and submitted the rule to EPA for approval as part of Kentucky’s ozone SIP. The rule was adopted by Kentucky on January 12, 1998, and approved by EPA into the SIP on December 8, 1998 (63 FR 675896). Under this regulation, gasoline dispensing facilities with a monthly throughput of 25,000 gallons or more located in a Kentucky County in which the entire County is classified as severe, serious, or moderate nonattainment for ozone are required to install Stage II vapor recovery systems.

On October 29, 1999, having implemented all measures required of Kentucky to that date for moderate ozone nonattainment areas under the CAA, and with three years of data (1996-1998) showing compliance with the 1-hour ozone standards, KDAQ submitted to EPA an ozone maintenance plan and request for redesignation of the Kentucky portion of Cincinnati/Northern

¹ Section 182(b)(3) of the Act requires that states submit SIP revisions for moderate ozone nonattainment areas requiring that a system for gasoline vapor recovery of emissions from the refueling of motor vehicles be implemented in such nonattainment areas.

Kentucky area to attainment status. The maintenance plan, as required under section 175A of the CAA, showed that nitrogen oxides and volatile organic compounds (VOC) emissions in the Area would remain below the 1990 “attainment year’s” levels. In making these projections KDAQ factored in the emissions benefit (primarily VOC) of the Area’s Stage II program, and did not remove this program from the Kentucky SIP. The redesignation request and maintenance plan were approved by EPA on June 19, 2000 (65 FR 37879).

Since the Kentucky Stage II program was already in place and had been included in the Commonwealth’s October 29, 1999, redesignation request and 1-hour ozone maintenance plan for the Area, KDAQ elected not to remove the program from the SIP at that time. On April 6, 1994, EPA promulgated regulations requiring the phase-in of onboard refueling vapor recovery (ORVR) systems on new motor vehicles. Under section 202(a)(6) of the CAA, moderate ozone nonattainment areas are not required to implement Stage II vapor recovery programs after promulgation of ORVR standards.

II. Analysis of the Commonwealth’s Submittal

EPA’s primary consideration for determining the approvability of Kentucky’s request to exempt Stage II vapor control requirements for the Hertz Corporation facility located at the Cincinnati/Northern Kentucky International Airport in Boone County is whether this requested action complies with the requirements of section 110(l) of the CAA. Below is EPA’s analysis of these considerations.

a. Federal Requirements for Stage II

States were required to adopt Stage II rules for all areas classified as “moderate” or worse under section 182(b)(3) of the CAA. However, section 202(a)(6) of the CAA states that “the requirements of section 182(b)(3) (relating to Stage II gasoline vapor recovery) for areas classified under section 181 as moderate for ozone shall not apply after the promulgation of such [ORVR] standards.” ORVR regulations were promulgated by EPA on April 6, 1994. *See* 59 FR 16262, and 40 CFR 86.001, .098). As a result, the CAA no longer requires moderate areas to impose Stage II controls under section 182(b)(3), and such areas may seek SIP revisions to remove such requirements from their SIP, subject to section 110(l) of the Act. EPA’s policy memoranda related to ORVR, dated March 9, 1993, and June 23, 1993, provided further guidance on removing Stage II requirements from certain areas. The policy memorandum dated March 9, 1993, states “[w]hen onboard rules are promulgated, a State may withdraw its Stage II rules for moderate areas from the SIP (or from consideration as a SIP revision) consistent with its obligation under sections 182(b)(3) and 202(a)(6), so long as withdrawal will not interfere with any other applicable requirements of the Act.” Because the Stage II vapor controls in Kentucky are implemented pursuant to the Commonwealth’s approved maintenance plan, the Commonwealth’s request for a source specific exemption from the Stage II vapor control requirements is subject to the requirements of section 110(l) of the CAA.

Section 110(l) of the Act provides that EPA cannot approve a SIP revision if that revision interferes with any applicable requirement regarding attainment, reasonable further progress (RFP) or any requirement established in the CAA. EPA can approve a SIP revision that removes

or modifies control measures in the SIP once states make a “noninterference” demonstration that such a removal or modification will not interfere with attainment of the NAAQS, RFP or any other CAA requirement. As such, Kentucky must make a demonstration of noninterference in order to exempt the Hertz Corporation facility located at the Cincinnati/Northern Kentucky International Airport in Boone County from the Stage II requirements.

b. Cincinnati-Hamilton Interstate Area Air Quality Status

With respect to ozone, on April 30, 2004, EPA designated the Cincinnati/Northern Kentucky Area as nonattainment for the 1997 8-hour ozone NAAQS. *See* 69 FR 23857. On January 29, 2010, the Commonwealth submitted to EPA a redesignation request and maintenance plan for the 1997 8-hour ozone NAAQS. EPA then redesignated the Cincinnati/Northern Kentucky area to attainment for the 1997 8-hour ozone NAAQS on August 5, 2010 (75 FR 4718). EPA then designated portions of Boone, Campbell and Kenton Counties in Kentucky as moderate nonattainment for the 2008 8-hour ozone NAAQS as part of the Cincinnati/ Northern Kentucky Nonattainment Area. This designation for the 2008 8-hour ozone NAAQS was effective July 20, 2012. *See* 77 FR 30088.

With respect to PM, on July 18, 1997, EPA promulgated the first air quality standards for PM_{2.5}. EPA promulgated an annual PM_{2.5} standard at a level of 15 micrograms per cubic meter (µg/m³), based on a 3-year average of annual mean PM_{2.5} concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 µg/m³, based on a 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations. On January 5, 2005, at 70 FR 944, and

supplemented on April 14, 2005, at 70 FR 19844, EPA designated Boone, Campbell, and Kenton Counties in Kentucky as part of the tri-state Cincinnati-Hamilton Nonattainment Area for the 1997 PM_{2.5} NAAQS.²

On January 27, 2011, KDAQ submitted a request to redesignate the Kentucky portion of the tri-state Cincinnati-Hamilton Area PM_{2.5} Nonattainment Area to attainment for the 1997 Annual PM_{2.5} NAAQS based on 2007-2009 data. On December 15, 2011, EPA published the final rulemaking redesignating the Area to attainment for the 1997 annual PM_{2.5} NAAQS. *See* 76 FR 77904.

In 2006, EPA strengthened the primary and secondary 24-hour PM_{2.5} NAAQS from 65 µg/m³ to 35 µg/m³, and retained the current primary and secondary annual PM_{2.5} NAAQS at 15 µg/m³. *See* 71 FR 61144, October 17, 2006. The revision of the 24-hour PM_{2.5} NAAQS in 2006, triggered the designation process for the NAAQS. The Cincinnati/Northern Kentucky Area was designated attainment for the 2006 PM_{2.5} NAAQS. *See* 74 FR 58688, November 13, 2009.

c. Non-Interference Demonstration for Exemption of Stage II Requirements.

EPA is making the preliminary determination that Kentucky's January 17, 2014, source-specific revision to the Kentucky SIP is approvable based on the CAA and the December 12, 2006, EPA memorandum from Stephen D. Page entitled, "*Removal of Stage II Vapor Recovery in Situations Where Widespread use of On-board Refueling Vapor Recovery is Demonstrated,*"

² EPA subsequently clarified that the Tri-state Cincinnati-Hamilton Area was classified unclassifiable/attainment for the 24-hour NAAQS promulgated in 1997. *See* 74 FR 58688 (November 13, 2009).

which provides guidance to states concerning the removal of Stage II gasoline vapor recovery systems where states demonstrate to EPA that widespread use of ORVR has occurred in specific portions of the motor vehicle fleet.

As previously discussed, states were required to adopt Stage II rules for such areas under section 182(b)(3) of the CAA. However, section 202(a)(6) of the CAA provides that the requirements of section 182(b)(3) (relating to Stage II gasoline vapor recovery) for areas classified as moderate for ozone shall not apply after the promulgation of ORVR standards. As noted above, the Hertz Corporation facility is located in a moderate nonattainment area for purposes of the 2008 ozone NAAQS. Nevertheless, pursuant to the December 12, 2006 Memorandum, EPA is proposing to conclude that an analysis as described in the guidance is relevant to satisfy the section 110(l) demonstration necessary to exempt the Hertz Corporation facility from the Stage II vapor control requirements.

EPA believes the widespread use of ORVR has been sufficiently demonstrated with respect to the rental car fleet that will be utilized by the Hertz Corporation facility at issue.³ EPA's December 12, 2006, memorandum states that if 95 percent of the vehicles in the fleet have ORVR, then widespread use will likely have been demonstrated for that fleet. The memorandum addresses the following specific fleets:

- Initial fueling of new vehicles at automobile assembly plants;

³ On May 16, 2012, EPA made a determination that ORVR was in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions. *See* 77 FR 28772. EPA estimated that approximately 70 percent of all vehicles would be equipped with on-board systems to capture these vapors by the end of 2012, rendering the use of Stage II vapor recovery systems redundant.

- Refueling of rental cars at rental car facilities; and
- Refueling of flexible fuel vehicles at E85 dispensing pumps.

Most large rental companies rent current model vehicles, that are equipped with ORVR and vehicle models are updated to current year models every year or two. The Commonwealth of Kentucky has confirmed that 100 percent of the fleet will be equipped with 2006 model year (first model year vehicles required to be equipped with ORVR) and newer vehicles at the Hertz Corporation facility at the Cincinnati/Northern Kentucky International Airport in Boone County.

EPA has preliminarily determined that Kentucky has adequately demonstrated that ORVR is in widespread use and that the Stage II requirements of the Kentucky SIP have been sufficiently supplanted by the ORVR such that exemption of the Hertz Corporation facility from the Stage II requirements would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

III. Proposed Action

EPA is proposing to approve the aforementioned source-specific SIP revision request from Kentucky. VOC emissions from vehicles at the Hertz Corporation facility are controlled by ORVR, therefore, EPA has preliminarily concluded that removal of Stage II requirements at this facility would not result in an increase of VOC emissions, and thus would not contribute to ozone formation. The Commonwealth is seeking to exempt this facility from the Stage II requirements and EPA has preliminarily determined that Kentucky has fully satisfied the

requirements of section 110(l) of the CAA. Therefore, EPA is proposing to approve this source-specific SIP revision as being consistent with section 110 of the CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by Commonwealth law. For that reason, these proposed actions:

- Are not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse Gas, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 3, 2014.

A. Stanely Meiburg,
Acting Regional Administrator,
Region 4.

Billing code **6560-50-P**

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